

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

IN RE: SMITH & NEPHEW  
BIRMINGHAM HIP RESURFACING  
(BHR) HIP IMPLANT PRODUCTS  
LIABILITY LITIGATION

MDL-17-md-2775  
Hon. Catherine C. Blake

This Document Relates to  
THA TRACK CASES

Case No. 1:20-cv-1345

**THA TRACK SHORT FORM COMPLAINT FOR PLAINTIFFS WITH BHR CUPS,  
MODULAR FEMORAL HEADS AND STEMS (THA CASES  
NOT INVOLVING THE R3 METAL LINER)**

1. Plaintiff, William T. Britton, states and brings this civil action involving a total hip arthroplasty (“THA”) as part of the “THA Track” in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff is filing this Short Form Complaint pursuant to CMO No. 10, entered on September 24, 2018 by this Court.

**PARTIES, JURISDICTION AND VENUE**

2. Plaintiff is a resident and citizen of Cumming, Georgia and claims damages as set forth below.

3. Federal jurisdiction is based on diversity of citizenship.

4. The Federal District in which Plaintiff’s initial implant took place: Northern District of Georgia.

5. The Federal District in which Plaintiff’s revision surgery took place: Northern District of Georgia.

6. Plaintiff brings this action [*check the applicable designation*]:

  X   On behalf of himself;

**FACTUAL ALLEGATIONS**

7. On or about June 2010, Plaintiff underwent surgery during which a BHR acetabular cup was implanted into Plaintiff's right hip, along with the following non-BHR System components: cobalt-chromium modular femoral head; Synergy high-offset femoral stem; and, cobalt chromium modular head sleeve.

8. Plaintiff's right hip implant surgery was performed at WS North Fulton Hospital located at 3000 Hospital Blvd., Roswell, GA 30076 by Dr. Glenn D. Lane.

9. Plaintiff underwent the following medically-indicated revision of the right hip implant on or about the following date: January 6, 2020. Plaintiff received the following hip components during the revision surgery: Smith & Nephew 28mm Oxinium femoral head, and a Smith & Nephew dual mobility 28mmID polyethylene liner.

10. Plaintiff's right revision surgery was performed at WS North Fulton Hospital located in 3000 Hospital Blvd., Roswell, GA 30076 by Dr. Glenn D. Lane.

11. Plaintiff alleges the following complications and/or injuries as a result of the component(s) implanted in Plaintiff's right hip, some or all of which made revision surgery medically necessary: pain, limited mobility, and metallosis as a result of the premature failure of the device.

12. Plaintiff adopts the allegations of the BHR-THA Master Amended Consolidated Complaint ("BHR-THA MACC") filed August 14, 2018, against Smith & Nephew, Inc.<sup>1</sup> and all amendments to the BHR-THA MACC:

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<sup>1</sup> Plaintiffs have since voluntarily dismissed two additional defendants named in the BHR-THA MACC, Smith & Nephew plc and Smith & Nephew Ltd. Adoption of the BHR-THA MACC

Yes ☒ No ☐

**ALLEGATIONS AS TO INJURIES**

13. (a) Plaintiff claims damages as a result of (check all that are applicable):

☒ INJURY TO HIMSELF  
☐ INJURY TO THE PERSON REPRESENTED  
☐ WRONGFUL DEATH  
☐ SURVIVORSHIP ACTION  
☒ ECONOMIC LOSS

14. In addition to the allegations in the THA-MACC, Plaintiff alleges that Plaintiff (i) viewed and/or heard the following representations that Plaintiff alleges are false, misleading, incomplete, or otherwise were misrepresentation(s): On or about June 2010, Plaintiff asserts his implanting surgeon at WS North Fulton Hospital, Dr. Glenn Lane, recommended the Smith & Nephew device due to his relatively young age and active lifestyle. However, Plaintiff was not informed of the potential risk of elevated metal ion levels or premature failure of the device, nor was he informed about the risks of metal-on-metal hip implants in general. Furthermore, Plaintiff was not informed that the implants he received were not approved for use in the total hip arthroplasty procedure he underwent on or about June 2010, and (ii) relied upon those representations or misrepresentations as described in the THA-BHR MACC as well as in the following manner: Plaintiff relied on these representations in making his decision to undergo a total hip arthroplasty.

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does not act as a means by which a plaintiff can sue these now-dismissed defendants or any other foreign defendants.

**DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY**

15. The following claims and allegations in the BHR-THA MACC are asserted by Plaintiff and are herein adopted by reference (check all that are applicable):

☒ COUNT I (Strict Products Liability, Design Defect and Failure to Warn)

Specific state common law and statutory law that applies: California.

☒ COUNT II (Negligence and Negligent Failure to Warn)

Specific state common law and statutory law that applies: California.

☒ COUNT III (Negligence Per Se)

Specific state common law and statutory law that applies: California.

☒ COUNT IV (Breach of Express Warranty)

Specific state common law and statutory law that applies: California.

☒ COUNT V (Breach of Implied Warranty)

Specific state common law and statutory law that applies: California.

☒ COUNT VI (Negligent Misrepresentation)

Specific state common law and statutory law that applies: California.

☒ COUNT VII (Unfair and Deceptive Trade Practices)

Specific state common law and statutory law that applies: California.

☒ COUNT VIII (Fraudulent Concealment)

Specific state common law and statutory law that applies: California.

☒ COUNT IX (Punitive Damages)

Specific state common law and statutory law that applies: California.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and,
7. All other relief as the Court deems necessary, just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff hereby demands a trial by jury as to all claims in Complaint so triable.

Dated: May 29, 2020

Respectfully submitted,

JONES WARD PLC

s/ Sean A. McCarty

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